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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,554	12/20/2000	Georg Domenig		4501

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,554

Applicant(s)

DOMENIG ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/20/00 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Priority

This application repeats a substantial portion of prior Application No. 09/640,052, filed 08/17/00, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Drawings

The drawings are objected to because there are two figures labeled figure 3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because "upper and lower mounting brackets" on line 2 is confusing since it is unclear if the mounting brackets comprise the shelf assembly or are in addition thereto. On line 4, "a cabinet frame" is confusing since it is unclear if the applicant is setting forth another cabinet frame or is referring to the cabinet frame set forth above. On lines 7-8, "the slidably . . . shorter post" and "the shorter post" on line 9 are confusing since it is unclear if the applicant is referring to the height adjustment device or is setting forth elements in addition to the height adjustment

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device. On line 9, "the lower post" is confusing since it is unclear if the applicant is referring to the post set forth above or is attempting to set forth another post in addition to the one set forth above. On lines 13-14, "shelf retaining element" should be more completely described in order to fully describe what is set forth in the disclosure.

Finally, "this improvement" on line 15 can be easily implied and should be avoided.

Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the rotary shelf. See claim 1.

Claim Rejections - 35 USC § 112

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "supporting one or more" on line 4 of claim 1 render the claims indefinite because it is unclear if the first tubular post, the first and second ends or the mounting brackets support one or more shelves. Additionally, it is unclear if the applicant is setting forth one or more than one shelf. Recitations such as "pre-selected location" on line 13 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What element of the invention includes the location the applicant is referring to and how is it "pre-selected"? Recitations such as "[t]he adjustment means" on line 1 of claim 2 render the claims indefinite because they lack

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antecedent basis. Recitations such as "a threaded member" on line 4 of claim 2 render the claims indefinite because it is unclear if the applicant is referring to the mating screw set forth above or is attempting to set forth another element of the invention in addition to the screw set forth above. Recitations such as "tubular post means" on line 2 of claim 4 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Recitations such as "the hub" on line 8 of claim 4 render the claims indefinite because it is unclear which one of the hubs set forth above the applicant is referring to. Recitations such as "flat stock" on line 2 of claim 5 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Recitations such as "to be telescopically received" on line 4 of claim 6 render the claims indefinite because it is unclear what element of the invention the applicant is referring to. Recitations such as "the first tubular" on line 6 of claim 13 render the claims indefinite because it is unclear what the applicant is attempting to set forth.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 12 and 14 of copending Application No. 09/640,052 in view of Frankel. Although the conflicting claims are not identical, they are not patentably distinct from each other because Frankel discloses a rotary shelf assembly mechanism comprising a first tubular post 18 having first and second ends (not numbered), a second tubular post 29 having first and second ends (not numbered), and a first bearing element 30.

It would have been obvious to one of ordinary skill in the art to provide copending Application No. 09/640,052 with first and second ends and a first bearing element, as taught by Frankel, to more securely attach the mechanism to a cabinet.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Frankel.

Frankel discloses a rotary shelf assembly mechanism 10 comprising first 32 and second 24 mounting brackets placed apart and opposing each other, a first tubular post 18 having first and second ends disposed lengthwise between the first and second mounting brackets supporting one or more shelves 46, a first bearing element 30 mounted on the post adjacent to the first end of the post and capable of engaging the first mounting bracket for rotation about the axis of the post, and a post height adjustment assembly including a second tubular post 29 having first and second ends and sized to be telescopically received within the second end of the first tubular post and having an elongated recess 31 extending longitudinally parallel to the axis of the second tubular post, the first tubular post having an aperture (not numbered, but seen in figure 3), a mating screw 33 extendable through the aperture of the first tubular post and into the elongated recess to secure the second tubular post with the first tubular post in a pre-selected location and thereby join the posts to span the distance between the first and second mounting brackets to insure connected post rotation.

Allowable Subject Matter

Claims 2 and 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach a casting positioned within the first tubular post having a recess fitting portion and a threaded recess extending into the elongated recess of the second tubular post, mating screw extending through the aperture and being threadably engageable with the threaded recess to fixedly secure the second tubular post to the first tubular post. See claim 2, lines 1-6. Also, note that the underlined words above must be included in the claim before the application can be allowed.

Claims 4-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach means for adjusting the length of the posts as shown and described in the specification which includes a casting positioned within the first tubular post having a recess fitting portion and a threaded recess extending into the elongated recess of the second tubular post, mating screw extending through the aperture and being threadably engageable with the threaded recess to fixedly secure the second tubular post to the first tubular post and bradable extensions.

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Although references, such as Frankel, disclose the function of adjusting the length of the posts, they fail to disclose the same structure or equivalents thereto as that disclosed in the specification.

It should be noted that the applicant should amend the recitation "post length adjusting means" to --means for adjusting the length of the posts-- to clearly set forth that the applicant is invoking 35 USC 112 paragraph 6.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mitts et al., Benting and Preston are cited for disclosing a rotary shelf assembly having means for adjusting posts. Murch, Zierold et al., Booth '577 and '582, Wu, and Kuo are cited for disclosing means for attaching two shafts to one another. McCaffrey and Lorentz et al. are cited for disclosing means for attaching a shelf to a post.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
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January 13, 2002